

**IN THE UNITED STATES DISTRICT COURT FOR THE
WESTERN DISTRICT OF OKLAHOMA**

TYRONE HENRY McMILLER,

Plaintiff,

v.

GEO GROUP Inc., et al.,

Defendants.

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No. CIV-12-1060-W

REPORT AND RECOMMENDATION

Plaintiff, a state prisoner appearing pro se, brings this action pursuant to 42 U.S.C. § 1983 alleging various violations of his constitutional rights. Pursuant to an order by United States District Judge Lee W. West, the matter has been referred to the undersigned Magistrate Judge for initial proceedings consistent with 28 U.S.C. § 636(b)(1)(B). Currently before the Court is the Second Motion to Dismiss of Defendant GEO Group, Inc., Defendant Bernard, and Defendant Taylor. **ECF No. 71**. For the following reasons, it is recommended that the motion be **DENIED**.

The basis for the motion is that Plaintiff did not timely submit the Second Amended Complaint within the time period established in the Order of Judge West dated September 17, 2014. In an Order entered by the undersigned of even date, it is explained that Plaintiff did timely *submit* a proposed Second Amended Complaint, but that the same was not presented in pleading form and so was not filed in the case. Plaintiff has been advised of the steps he needs to follow to rectify this problem, and has been given until January 2, 2014, to file his Second Amended Complaint.

Accordingly, it is hereby recommended that the Second Motion to Dismiss of Defendant GEO Group, Inc., Defendant Bernard, and Defendant Taylor, **ECF No. 71**, be **DENIED**.

The parties are advised of their right to file specific written objections to this Report and Recommendation. *See* 28 U.S.C. § 636 and Fed.R.Civ.P. 72. Any such objections must be filed with Clerk of the District Court by **December 27, 2013**. The parties are further advised that failure to make timely objection to this Report and Recommendation waives the right to appellate review of the factual and legal issues addressed herein. *Casanova v. Ulibarri*, 595 F.3d 1120, 1123 (10th Cir. 2010).

STATUS OF THE REFERRAL

This Report and Recommendation **DOES NOT** terminate the referral by the District Judge in this matter.

DATED on December 5, 2013.



SHON T. ERWIN
UNITED STATES MAGISTRATE JUDGE